United Nations S/2013/467

Security Council

Distr.: General
2 August 2013

Original: English

# Letter dated 2 August 2013 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the fourteenth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004), which was submitted to the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, in accordance with paragraph (a) of annex I to resolution 2083 (2012).

I should be grateful if the attached report could be brought to the attention of the Council members and issued as a document of the Security Council.

(*Signed*) Gary **Quinlan**
Chair
Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities

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**Letter dated 1 July 2013 from the Analytical Support and Sanctions Monitoring Team in accordance with paragraph (a) of annex I to Security Council resolution 2083 (2012) addressed to the Chair of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities**

I have the honour to transmit herewith the fourteenth report of the Analytical Support and Sanctions Monitoring Team in accordance with paragraph (a) of annex I to Security Council resolution 2083 (2012).

The Monitoring Team notes that the document of reference is the English original.

(*Signed*) Alexander **Evans**
Coordinator
Analytical Support and Sanctions Monitoring Team

# Fourteenth report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2083 (2012) concerning Al-Qaida and associated individuals and entities

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*Summary*

The present report is the fourteenth to be submitted by the Analytical Support and Sanctions Monitoring Team, which supports the work of the Security Council and its Committee established pursuant to Council resolutions 1267 (1999) and 1989 (2011) and now referred to as the Al-Qaida Sanctions Committee. The Team finds that the Al-Qaida threat continues to diversify, with the evolution of a range of loosely linked affiliates and the rise of autonomously radicalized individuals and cells drawing on Al-Qaida ideology. While the threat posed by Al-Qaida as a global terrorist organization has declined, the threat posed by its affiliates and its infectious ideas persists. Advancing a more effective, evidence-based United Nations targeted sanctions regime remains important.

# I. The threat

1. Al-Qaida (QE.A.4.01) and its affiliates are more diverse and differentiated than before, united only by a loose ideology and a commitment to terrorist violence. A fragmented and weakened Al-Qaida has not been extinguished, although Aiman Muhammed Rabi al-Zawahiri (QI.A.6.01) has demonstrated little capability to unify or lead Al-Qaida affiliates. Some affiliates have been pushed back by military operations in Mali and Somalia, while others continue to pursue support by exploiting regional conflicts and grievances. However, the reality of Al-Qaida's diminished capabilities and limited appeal does not mean that the threat of Al-Qaida attacks has passed. Individuals and cells associated with Al-Qaida and its affiliates continue to innovate with regard to targets, tactics and technology.

2. Three developments point to the continuing evolution of the threat. First, terrorist propaganda on the Internet continues to grow in sophistication and reach, and is contributing to the problem of self-radicalization. Second, the recent attacks in Boston, London and Paris point to the persistent challenge of acts of expressive terrorist violence committed by individuals or small groups. Troublingly, these may draw on autonomous attack plans rather than the specific leadership tasking of either Al-Qaida or affiliates. Third, the continuing civil war in the Syrian Arab Republic has seen the emergence of a strong Al-Qaida presence drawing from Al-Qaida in Iraq (QE.J.115.04), attracting hundreds of recruits from outside the Syrian Arab Republic.

## A. Al-Qaida

3. Al-Qaida's core has seen no revival of its fortunes over the past six months. A degraded senior leadership based in the Afghanistan-Pakistan border region continues to issue statements, but demonstrates little ability to direct operations through centralized command and control. The unsuccessful attempts of Aiman Muhammad Rabi al-Zawahiri to mediate internal conflicts between Al-Qaida and Jabhat al-Nusra (an affiliate of Al-Qaida in Iraq) as well as the persistent infighting within Al-Shabaab point to the limits of Al-Zawahiri's authority. Al-Qaida affiliates pursue autonomous agendas even as they draw on Al-Qaida branding. The ideology associated with Al-Qaida remains infectious, supported by sophisticated digital propaganda. Although Al-Qaida's core has a significantly reduced capability for international attack planning, its rhetoric and its calls for attacks continue to mobilize violent radicals, regardless of where they are based.

## B. Al-Qaida affiliates

4. The trend towards the localization of Al-Qaida affiliates continues.[1] Some have gained traction by taking opportunistic advantage of local conflicts in countries such as the Syrian Arab Republic and Yemen. Others are losing influence owing either to military operations or to political dialogue, or sometimes to a combination of both. In Mali and Somalia, military operations have significantly diminished the operating space available to affiliates. In the southern Philippines, peace talks have

[1] Bruce Hoffman, "Al Qaeda's uncertain future", in *Studies in Conflict and Terrorism*, vol. 36 published online in June 2013.

reduced the influence of affiliates. However, the diversification of Al-Qaida affiliates has not reduced the threat that they pose, to civilians, national Governments or selected targets in the international community. These attacks are largely contained within the operating areas of each affiliate.

5. The capabilities of affiliates remain a concern. They can train recruits, innovate in their attack planning[2] and carry out attacks. Lashkar-e-Tayyiba (QE.L.118.05) continues to provide advanced terrorist training, including on improvised explosive devices. Al-Qaida in the Arabian Peninsula (AQAP) (QE.A.129.10) continues to be a major source of technological innovation. The Organization of Al-Qaida in the Islamic Maghreb (AQIM) (QE.T.14.01) has developed significant expertise in kidnapping for ransom. AQAP and Al-Shabaab continue to support high-quality digital propaganda operations. Operational links between different affiliates can increase the threat by transferring skills and knowledge as well as creating new networks or strengthening existing ones. This is all the more reason to intensify efforts aimed at a well-targeted and properly implemented travel ban on listed individuals, particularly those closely tied to this networking and facilitation.

6. The two most visible arenas for Al-Qaida affiliate activity during the first six months of 2013 have been the Sahel and the Middle East.

7. In the Sahel region, the French-led Operation Serval has dislodged AQIM and its affiliates Ansar Eddine (QE.A.135.13) and the Movement for Unity and Jihad in Western Africa (MUJAO) (QE.M.134.12) from the main towns in northern Mali. Although pockets of resistance remain, governmental authority has been restored and these groups significantly degraded. Operation Serval highlighted the high level of the training and equipment of terrorist groups in the region, along with the need to strengthen regional and subregional cooperation, both among Maghreb countries and between the Maghreb and the Sahel. It also highlighted the close link between organized crime and terrorism. Notwithstanding the positive results achieved in Mali, the risk of attacks by Al-Qaida affiliates across the Sahel persists.[3]

8. Primarily in eastern Libya, the continuing efforts of Ansar al-Shariaa (not listed and not identical with the Ansar al-Shari'a affiliate of AQAP) are cause for concern. There are operational contacts between Ansar al-Shariaa and Al-Qaida affiliates in the Sahel, the Maghreb, the Middle East and South Asia. Many foreign fighters have been travelling to training camps in Libya before heading elsewhere to fight. In Tunisia, Ansar al-Shariaa, here composed mainly of former prisoners, is inspired by the Tunisian Combatant Group (QE.T.90.02). The group appears to be making a transition from radical preaching to establishing links with Al-Qaida affiliates across the Maghreb and the Sahel and in Yemen. There were clashes in April 2013 in a remote area in the densely forested Jebel Chaambi national park, near the city of Kasserine, between members of Katibat Uqba Ibn Nafa'a (not listed), an AQIM affiliate, and Tunisian security forces. Tensions have grown since May 2013, when the Government of Tunisia banned Ansar al-Shariaa from holding its annual congress in Kairouan.

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[2] Anne Stenersen, "Bomb-making for beginners: inside an Al-Qaeda e-learning course", in *Perspectives on Terrorism, North America*, vol. 7, 1 February 2013.

[3] Information obtained during discussions of the Monitoring Team with officials of Member States from the Sahel, the Maghreb and the European Union. See S/2013/338 and S/2013/354.

9. In West Africa, the rising challenge of militancy in northern Nigeria has led to a robust government response. Ansaru (not listed), with close Al-Qaida connections, and Boko Haram (not listed), a complex group with looser links to Al-Qaida, tap into local political agendas but also show signs of sympathy with broader Al-Qaida messaging. During the conduct of Operation Serval in Mali, it emerged that there were links between Boko Haram, AQIM and MUJAO. It is an open question as to whether violent extremism in northern Nigeria remains localized or is linked more closely to groups operating in the Sahel.

10. In East Africa, Al-Shabaab has lost control over much of the territory it previously controlled. Some of its leaders, however, remain focused on international terrorism as well as a more Somalia-focused agenda. The planning of attacks against regional Governments and the international community continues.[4]

11. In the Middle East, Al-Qaida's influence has diminished in Yemen but risen in the Syrian Arab Republic. AQAP has lost control over territory seized in 2012, including several major towns. Although contained by the new Yemeni Government, the threat that AQAP poses — to Yemen, Saudi Arabia and international targets in the region — remains. AQAP also remains dangerous as the group has proved to be both versatile and innovative.

12. Meanwhile, Al-Qaida in Iraq (AQI) continues to pursue a vicious sectarian fight with no agenda beyond the local redistribution of power. Across the border in the Syrian Arab Republic, Jabhat al-Nusra — an affiliate of AQI — has gained influence and recruits from its fighting in the increasingly bitter civil war in the Syrian Arab Republic. There is an open question as to what the hundreds (and possibly over a thousand) foreign volunteers with Jabhat al-Nusra will do when the current conflict in the Syrian Arab Republic is concluded. What happens with these fighters will depend on what they experience while in the Syrian Arab Republic, but past conflicts involving foreign volunteers with Al-Qaida affiliates have proved to have an enduring effect on the local and international threat picture.[5]

13. In South Asia, Lashkar-e-Tayyiba has a significant terrorist capability allied to an ideology of violent radicalism by no means limited to its campaign in Jammu and Kashmir.[6] Although recruiting primarily from the Punjab province of Pakistan, Lashkar-e-Tayyiba continues to be active in Afghanistan and India as well as Pakistan. Its transnational reach and its highly specialized training remain a cause for concern.[7]

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[4] Information obtained during Monitoring Team discussions with officials of East African Member States in April 2013.

[5] Thomas Hegghammer, "Should I stay or should I go? Explaining variation in Western jihadists' choice between domestic and foreign fighting", in *American Political Science Review*, vol. 107, 1 February 2013.

[6] Don Rassler, Christine Fair and others, "The fighters of Lashkar-e-Taiba: recruitment, training, deployment and death", Combating Terrorism Centre at West Point occasional paper, April 2013.

[7] Jonah Blank, "Lashkar-e Taiba and the threat to the United States of a Mumbai-style attack", testimony presented before the United States House of Representatives Homeland Security Committee, Subcommittee on Counterterrorism and Intelligence, 12 June 2013.

## C. Links with the Taliban

14. The Taliban and Afghanistan continue to provide a symbolic and practical focus for Al-Qaida. Aiman Muhammad Rabi al-Zawahiri recently recalled his contacts with Jalaluddin Haqqani (TI.H.40.01), portrayed senior Taliban members as close associates of Usama bin Laden and described Afghanistan as the "birthplace" of the organization.[8] In order to exploit the announced drawdown of international forces, Al-Qaida is motivated to maintain at least a token presence in Afghanistan.[9]

15. Individuals with likely connections to Al-Qaida continue to be arrested or killed in Afghanistan, particularly in Kunar and Nuristan. Overall numbers of killed or captured foreign fighters and Al-Qaida-linked leaders and facilitators have decreased since the last report on that issue (S/2012/971). This drastic fall from the numbers reported in the December 2012 report of the Monitoring Team (S/2012/968) is more pronounced than the decline in the tempo of security operations and probably reflects the fading appeal of Afghanistan for foreign fighters.

16. The Al-Qaida affiliates Tehrik-e Taliban Pakistan (TTP) (QE.T.132.11), Lashkar-e-Tayyiba and Harakat ul-Mujahidin (QE.H.8.01) continue to play an important role in the insurgency in Afghanistan.[10] Other affiliates such as the Eastern Turkistan Islamic Movement (QE.E.88.02), Jaish-i-Mohammed (QE.J.19.01) and Lashkar i Jhangvi (QE.L.96.03) provide suicide bombers for the planned and coordinated attacks of the Taliban and the Haqqani Network. The Islamic Movement of Uzbekistan (QE.I.10.01) has increased its recruitment among Afghans and has developed a field presence in several provinces of northern Afghanistan to the point where Afghan authorities see this threat as more pressing than that posed by the Taliban in their provinces.[11]

17. In some cases, Al-Qaida elements, as Usama bin Laden did previously, formally subordinate themselves to the Afghan Taliban. Tehrik-e Taliban Pakistan, as well as the Haqqani Network, portray themselves as under the overall command of Mohammed Omar (TI.O.4.01).

18. Gulbuddin Hekmatyar (QI.H.88.03) is seen primarily as a threat to the peace and security of Afghanistan. He wavers between trying to negotiate a peace settlement with the Government of Afghanistan and supporting the Afghan insurgency. His affiliation with Al-Qaida has been in doubt since 2010. In the light of political developments in Afghanistan, the Monitoring Team recommends that the Committee consider a mechanism for moving him from the Al-Qaida Sanctions List to the 1988 List.

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[8] Aiman Muhammad Rabi al-Zawahiri, "Days with the Imam — 3rd instalment", 2012.

[9] Aiman Muhammad Rabi al-Zawahiri, "The emerging sun of victory over the victorious Ummah and the vanquished crusades", 2012.

[10] During the Team's recent visit, Afghan authorities highlighted the role played by non-Afghan affiliates of Al-Qaida as trainers in the use of improvised explosive devices.

[11] Information obtained during meetings of the Monitoring Team with the Afghan National Army, police and intelligence officials held in the Kunduz and Mazar-e Sharif provinces of northern Afghanistan in September 2012 and May 2013.

# II. Strengthening the impact of the sanctions

## A. A properly targeted list

19. Targeted sanctions have the greatest effect if the individuals and entities listed in the regime are those currently playing influential roles in (or supporting) Al-Qaida or its affiliates. A properly targeted List needs to be constantly refreshed and to remain sufficiently modest in size if it is to be efficiently implemented by all States. The Monitoring Team recommends that the Committee consider further steps to improve the List, and that it task the Team with generating an annual confidential briefing to the Committee on how the List reflects the current threat picture.

## B. A well-communicated regime

20. Al-Qaida and its affiliates have shown themselves to be adept communicators, using marketing and propaganda to cultivate supporters and incite attacks. The sanctions regime is only as effective as it is well understood, in particular by Member States, whose active participation is crucial in contributing to a robust List and ensuring that appropriate enforcement follows. The Monitoring Team recommends that the Committee formally commission it to conduct a strategic communications review of the Al-Qaida sanctions regime in order to identify public and digital diplomacy actions that would enhance Member State and public understanding of the regime and contribute to strengthened implementation.

## C. A focus on implementation and non-compliance

21. The Al-Qaida sanctions regime has the greatest preventive effect when it is fully and consistently implemented. There are three reasons why this may not happen. First, the regime itself may need internal improvements in order to support national implementation. Second, Member States may lack capacity in areas crucial to implementation, and may require technical or other assistance in order to implement the regime. Third, political will may be lacking, perhaps because the threat may not be perceived as affecting vital national interests, or because targeted sanctions are not perceived to be a core tool in preventing or countering terrorism, or because passive or active support is being (covertly) extended. No specific instances of non-compliance have been brought to the attention of the Monitoring Team over the past six months. However, Member States have made requests relating to the regime itself and with regard to technical or other assistance.

# III. Implementation of the sanctions

## A. Quality of the List

22. The Monitoring Team continues to work on reviewing the quality of the List. There are three strands to this work. First, the Team reviews list entries with Member States during country visits and regional meetings in order to ensure that the listings remain current. Second, liaison with Member States continues in order to ensure accurate and comprehensive identifiers. Third, media monitoring and

outreach to external experts are carried out with a view to incorporating the latest information into listings.

## B. Impact of the reviews

23. Under Security Council resolutions 1822 (2008) and, most recently, 2083 (2012), the Committee is mandated to conduct an annual review of those listings that have not been the subject of examination within a period of three or more years. The Committee also conducts periodic reviews of the names of individuals reported to be deceased and of entities reported to be defunct. A similar review of entries lacking identifiers necessary to ensure effective implementation was mandated under Security Council resolutions 1904 (2009) and, most recently, 2083 (2012). These various reviews are designed to determine whether a listing remains appropriate, and require consultation with designating States as well as States of residence and nationality. The outcome of a review is highly dependent on the view of the designating State.

24. In its thirteenth report, the Monitoring Team recommended that in order to further strengthen the impact of the triennial review, the Committee act as if the designating State had recommended delisting in accordance with paragraph 27 of resolution 1989 (2011) unless the designating State argues for continued listing and provides detailed reasons for doing so. The Committee did not adopt this recommendation, but the Team continues to believe it to be appropriate.

25. Since the Monitoring Team's last report, the Committee has removed five individuals from the List pursuant to the Ombudsperson process and removed five individuals and six entities from the List pursuant to the various review processes.

## C. Dissemination of the List

26. The Committee has acknowledged the need to disseminate the Al-Qaida Sanctions List quickly and widely after the inclusion of new listings in order to prevent newly listed parties from sheltering their assets from freezing and to stop persons from circumventing the travel ban after they learn of their listing. Official notes verbales are relayed to capitals and, once received, are subject to sometimes lengthy validation and interdepartmental dissemination processes before action can be taken against the listed parties by implementing officials. The Committee could encourage Member States to minimize these delays.[12]

27. Furthermore, several States have established stopgap measures that allow their officials to implement sanctions under a Security Council listing even before national validation processes have been completed. Many officials in these and other Member States have requested the Committee to add them to the Secretariat's electronic distribution database for List-related notifications. The circulation of List-related updates by means of e-mail is one of the most efficient ways to strengthen implementation. As e-mail distribution is in line with the Security Council requirement that sanctions be implemented without delay, the Monitoring Team recommends that the Committee send a letter to Member States inviting them to subscribe to e-mail notifications.

[12] S/2009/245, paras. 39-41.

28. Many financial institutions and other private sector partners involved in implementing the sanctions download the List from the Committee website in PDF, HTML or XML format to update their internal databases. Some have established automated checking procedures, while others carry out periodic manual checks. There have been requests to allow the public sector to receive e-mail notifications of press releases. Since the press releases are public and intended for the widest possible dissemination, the Monitoring Team recommends that the Committee establish on its website an automated system for requesting press releases by e-mail or by using rich site summary (RSS) feeds.[13]

## D. Legal challenges to the sanctions regime

29. The legal position of the sanctions regime has improved since the Monitoring Team's last report. This has resulted from several developments, including the issuance of an opinion in the *Kadi* case by the Advocate General of the Court of Justice of the European Union; Yves Bot, on 19 March 2013[14] and the favourable rulings of the Office of the Ombudsperson on several listings. The Advocate General's opinion is significant because it lays out the key legal arguments in favour of limiting national and regional review of the Committee's decisions and provides long-awaited support for the institution of the Office of the Ombudsperson, thus potentially paving the way for the European Court of Justice to accommodate the Al-Qaida sanctions regime from a due process perspective.

30. The opinion of the Advocate General advises that the Court of Justice overturn the decision of the General Court in *Kadi II* (30 September 2010),[15] which found for Mr. Qadi, and instead rule in favour of the European Union authorities. The Advocate General would dismiss Mr. Qadi's claims against the European Union authorities stemming from their implementation of his listing by the 1267 Committee. While the opinion is advisory in nature (the Court of Justice is not obligated to follow it), there is a history of the Court of Justice adopting the views of the Advocate General.

31. The Advocate General's opinion focuses its analysis on the "standard of review", i.e., the level of scrutiny that the European courts should provide with respect to the implementation by the European Union of Security Council listing decisions. Rejecting the "full and rigorous review" standard adopted by the General Court, which had found the reasons for Mr. Qadi's listing to be vague and unsupported, the Advocate General instead prescribes a more circumscribed review.

32. In paragraph 67 of his opinion, the Advocate General sets forth five reasons why a searching review should not apply in this context: (a) the preventive nature of the Al-Qaida sanctions measures; (b) the international context of the contested act; (c) the need to balance the requirements of combating terrorism and those of protecting fundamental rights; (d) the political nature of the assessments made by the 1267 Committee; and (e) the improvements in the delisting procedures within

[13] S/2008/324, para. 35.

[14] See opinion on joined cases C-584/10P, C-593/10P and C-595/10P, available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=135223&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=515909.

[15] Judgements of the Court of Justice of the European Union (http://curia.europa.eu), case T-85/09, *Kadi v. Commission*, 30 September 2011.

the 1267 Committee in recent years, particularly since the 2008 *Kadi* decision of the Court of Justice.

33. The Advocate General prescribes a two-pronged standard of review under which European Union courts would defer to the 1267 Committee's determinations of fact and of whether to list on the basis of those facts under most circumstances. The court should undertake a "normal" review, according to the Advocate General, of the "external" lawfulness of the sanctions measures against an individual or entity, that is, of whether the procedure followed respected the rights of the defence, including whether the reasons for listing were communicated properly, whether they were sufficient to permit a proper defence and whether the petitioner's inputs into the process were adequately taken into consideration. The Advocate General indicated that the procedures followed under the Al-Qaida sanctions regime currently pass that test. Second, the court should undertake a "limited review" of the "internal lawfulness" of the measures, that is, the merits of the statement of reasons and the decision to list based upon those reasons. Those decisions should be overturned only upon a finding of manifest error, inappropriateness or disproportionateness. In practice, this standard, if adopted, would insulate the European Union authorities (and, by extension, the 1267 Committee) from the majority of legal challenges to listing decisions.

## E. Ombudsperson

34. Since the Monitoring Team's last report, the Ombudsperson process has resulted in the upholding of several recent listing challenges and has continued to proceed and develop without significant obstacles. Each of the Ombudsperson's recommendations made under the resolution 1989 (2011) process has been followed, while none of the cases has been referred to the Security Council or overturned by means of a consensus procedure. Recently, the Ombudsperson has issued several reports recommending continued listing, signalling that the Ombudsperson's "reasonable and credible" standard is within reach of the ability of the Committee (and Member States) to assemble information pertaining to listed persons. This is a positive development for the regime, as it appears to demonstrate that the Committee can continue to target individuals and entities supporting Al-Qaida while also respecting fundamental guarantees of due process. In other words, the Ombudsperson process has not fundamentally undermined the ability of the Committee to do its basic work of identifying and taking action against supporters of Al-Qaida and related organizations.

## F. Compliance

35. Overall compliance with the sanctions regime remains difficult to measure. The Financial Action Task Force (FATF) and its FATF-style regional bodies have conducted evaluations of most Member States concerning their capacity to implement the assets freeze, but these evaluations have not touched upon the travel ban or the arms embargo. Moreover, because they tend to address the legal frameworks of the States in question rather than implementation against particular relevant listed persons, they only partially reflect the actual implementation of the assets freeze. The Monitoring Team is of the view that it should focus on those States in which listed individuals and entities are active. One template for further

reporting on compliance, therefore, would focus on these States and the listed individuals and entities found there.

36. The Security Council has continued, most recently by its resolution 2083 (2012), to task the Monitoring Team with identifying, gathering information on and reporting to the Committee incidents and patterns of non-compliance. This can be challenging, given the paucity of verifiable information and the potential for negative responses from the States concerned. The Monitoring Team takes its mandate with respect to non-compliance seriously and plans to step up its monitoring activities in order to report verifiable instances.

37. The Monitoring Team believes, however, that any instances of deliberate or careless non-implementation require careful handling. Confidential consultations with the Member States concerned should be preferred in the first instance to any public "naming and shaming". The vast majority of Member States wish to comply with the regime, and those who fail to comply generally do so because of lack of capacity, not lack of will. Where political will is a problem, the Monitoring Team recommends that the Committee encourage the Team to engage in confidence with suspected non-compliant parties in the first instance in order to understand the circumstances and encourage implementation, and then, in the event of continuing instances or patterns of non-compliance, to report in detail to the Committee.

## G. Narrative summaries

38. Since the Monitoring Team's last report, it has prepared narrative summaries of reasons for the listing of four new listings and 222 amendments, both technical and substantive, to existing listings. The Team has also updated a narrative summary following a review conducted by the Ombudsperson that recommended continued listing. The listing for Al-Qaida in Iraq was updated by the Committee to reflect the current activities of that entity in the Syrian Arab Republic under the name of Jabhat al-Nusra.

39. These amendments and updates have improved the quality of narrative summaries. However, discrepancies persist between those updated recently and those that have remained unchanged since the date of their first posting on the Committee's website. Such discrepancies are especially acute where the Ombudsperson, in carrying out her procedures, seeks information that justifies the continued listing, whereas many of the narrative summaries contain only information reflecting the reasons for the initial listing. While the Monitoring Team will continue to work with Member States, especially designating States, to bring listings up to date on a case-by-case basis, the Committee may wish to seek information for this purpose from relevant Member States in a more systematic way.

## H. Impact of the sanctions

40. The Al-Qaida sanctions will not end the threat posed by Al-Qaida and its affiliates, but will remain an important preventive (and disruptive) tool against them. The regime clearly has an effect. Politically, it demonstrates the international community's condemnation of Al-Qaida-related violent extremism. In practical terms, the regime has an effect in specific instances. Although this is difficult to measure, the regime may act as a deterrent to those who, whatever their motivation,

decide to pursue their grievances through expressive violence rather than expressive politics. The assets freeze can constrain terrorist financiers, limiting their access to the formal banking system and limiting their scope for partnering with legitimate business entities.[16] The travel ban can prevent facilitators and intermediaries among Al-Qaida affiliates from conducting business with each other as easily as they would otherwise be able to. Furthermore, the arms embargo has the scope to restrict even illegitimate sources of weaponry and components for Al-Qaida affiliates by increasing the risk premium for suppliers.

# IV. The assets freeze

## A. Trends in terrorist financing

41. In general, Al-Qaida and its affiliates continue to be low-cost operators, in particular when it comes to international attack plans. Only when significant territory is controlled (as had been the case in Afghanistan, Mali and Somalia before corrective military action was taken) do revenues increase significantly. There is a continuous need for more detailed work focusing on the contemporary nature of Al-Qaida and affiliate financing. The effectiveness of the assets freeze can be improved by better connecting those who understand current casework (such as law enforcement and intelligence agencies) with financial intelligence units. While the overall regulatory framework remains important, it should be accompanied by more evidence-based, targeted work by Governments.[17] This can enhance the disruptive and preventive effects of counter-terrorism finance. The Monitoring Team plans to conduct further analysis on this subject in partnership with Member States and other interested parties.

42. Al-Qaida and its affiliates, and individual financiers associated with them, continue to exploit formal and informal financial systems in order to move funds across borders and to fund their activities. Kidnapping for ransom outside the European Union remains a particular challenge, and Ansaru, Al-Shabaab and Tehrik-e Taliban Pakistan continue to kidnap in pursuit of revenue as well as publicity. Kidnapping for ransom deserves closer attention, first because of the revenue it generates for terrorists,[18] and second because it can also implicate Member States or financial institutions in the financing of terrorism (and potentially in non-compliance with the Al-Qaida sanctions regime).

43. Other funding sources remain important, including the proceeds of organized transnational criminal activities such as smuggling and human trafficking.[19] Within Europe, social benefit fraud, credit card misuse, loan applications and defaults remain a problem, along with extortion.[20] While the Security Council has confirmed

[16] This is why the accurate identification of financiers is so important. See S. V. Raghavan and V. Balasubramaniyan, "Financial facilitators: an important component of terror networks", in *Journal of Money Laundering Control*, vol. 15, 2012.

[17] Nikos Passas, "Terrorist finance, informal markets, trade and regulation: challenges of evidence regarding international efforts", in *Evidence-Based Counterterrorism Policy*, vol. 3, 2012.

[18] See statement of the Group of Eight at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207542/Kidnapping-for-ransom.pdf.

[19] S/2013/189, para. 61.

[20] See TE-SAT 2013, *EU Terrorism Situation and Trend Report*.

that the financial sanctions also apply to the provision of Internet hosting and related services, terrorists and terrorist groups are able to make extensive use of Internet services. The online sale of propaganda materials and subscription fees to some Internet sites has been identified by the European Police Office as another source of funding.

## B. Implementation of the assets freeze

44. Since the adoption of Security Council resolution 2083 (2012) in December 2012, four individuals and one entity have been listed. The Monitoring Team notes that no Member State has informed the Committee or the Team that assets have been located and frozen as a result of these recent listings.

45. Some Member States and one FATF-style regional body have expressed the need for assistance in implementing the Al-Qaida sanctions regime. While resolution 2083 (2012), in its paragraphs 55 and 61, contains a mandate to facilitate assistance on capacity-building upon request, no framework has yet been developed for that purpose. The Monitoring Team therefore recommends that a light-touch framework should be developed to facilitate capacity-building for Member States that have identified and requested assistance in this area, working closely with the Counter-Terrorism Committee Executive Directorate and Terrorism Prevention Branch of the United Nations Office on Drugs and Crime.

46. Financial institutions are at the forefront of the implementation of the financial sanctions measures under the Al-Qaida sanctions regime. A study[21] shows that the implementation of financial sanctions in developed countries remains a challenge for many financial institutions. Among the issues that have been identified are: a lack of clear, well-defined sanctions[22] policy, insufficient staff training, the establishment of an effective institution-wide sanctions compliance culture, and the overall efficiency of screening technologies.

47. In the developing world, a recent preliminary survey conducted jointly by the Eastern and Southern African Anti-Money-Laundering Group and the Alliance for Financial Inclusion highlighted the challenges faced by smaller local financial institutions that do not have access to costly commercial databases containing the required sanctions data to assist with customer transaction screening. The survey also noted the lack of national legal and regulatory measures to ensure compliance with these international obligations. In addition, smaller financial institutions have questioned the relevance and fairness of these measures in relation to their low-income client base.

48. One broader goal aimed at advancing implementation is to promote greater use of the formal financial sector. Financial inclusion serves multiple purposes, both reducing the flow of unregulated money and increasing the ability of law enforcement and national regulatory bodies to "follow the money". Improved financial inclusion can advance the Al-Qaida sanctions regime. The more that national regulators can tailor regulation in order to facilitate financial inclusion — which at times may mean

[21] "Facing the sanctions challenge in financial services: a global sanctions compliance study", Deloitte, 2009.

[22] The study covers both United Nations and non-United Nations sanctions.

suboptimal application of "know your customer" — the greater will be the reach of the Al-Qaida sanctions regime.[23]

## C. The non-financial sector

49. The circulation of the Al-Qaida Sanctions List in many countries is restricted to the financial services sector, although the involvement of actors from other sectors in terrorism financing schemes is possible. The FATF typologies report *Money Laundering and Terrorist Financing through the Real Estate Sector* (2008) suggests possible real estate sector links to terrorist financing. In general, the regulation of designated non-financial businesses and professions for purposes of anti-money-laundering and combating the financing of terrorist financing is relatively new, and weak in some regions. Hence, the designated non-financial businesses and professions sector remains vulnerable to abuse by terrorist financiers. The Monitoring Team therefore recommends that the Committee actively engage with designated non-financial businesses and professions to enhance the implementation of the Al-Qaida sanctions regime.

## D. Exemptions

50. Exemptions from the financial sanctions measures were first introduced under resolution 1267 (1999), which, in its paragraph 4 (b), provided for a "humanitarian need" exception to be approved by the Committee on a case-by-case basis. The resolution did not set out the process of applying for and granting such exemptions, nor did it indicate the circumstances in which such exemptions could be justified. Subsequently, the Security Council adopted resolution 1452 (2002), which clearly articulated the procedures and categories of exemption that might apply to the financial sanctions measures.

51. In paragraph 8 of resolution 2083 (2012), the Security Council encouraged Member States to make use of the provision of resolution 1452 (2002) permitting Member States to unfreeze frozen assets of a listed party to allow the payment of basic and other expenses, including for foodstuffs, rent or mortgage, medicines and medical treatment, reasonable professional fees and service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources. A Member State may use this exception by notifying the Committee of its intention to allow such exceptions and may allow the exemption in the absence of a negative decision within three working days of the notification. Resolution 1452 (2002) also provides for the exemption of extraordinary expenses subject to the approval of the Committee.

52. Resolution 2083 (2012) enhanced the fairness and transparency procedures applicable to the exemption measures by introducing a new exemption procedure allowing a listed party to submit a request for exemption to the Committee through the focal point mechanism established pursuant to resolution 1730 (2006), provided that the request has first been submitted for the consideration of the States of residence. Since the adoption of resolution 2083 (2012), the Committee has received no requests for exemption under the new procedure.

[23] This is why FATF is advocating a risk-based approach in its advice.

# V. The travel ban

## A. How terrorists travel

53. The travel ban is a crucial and a powerful tool in combating Al-Qaida terrorism globally. Terrorists have shown a great degree of ingenuity in attempting to cross national borders undetected. Conscious of the risk, most listed individuals remain in their current locations or move internationally by avoiding official border-crossing points. The increasing regionalization of Al-Qaida affiliates often means that terrorists move within a limited zone of porous borders (as in much of the Sahel).

## B. Implementation of the travel ban

54. Measuring the impact of the travel ban is difficult, as Member States are not obliged to report to the Committee when they have prevented a listed person from crossing their borders. Most Member States assert that national lists and databases are regularly updated to meet the travel ban requirements and that their immigration and border control authorities give immediate effect to the Committee's listing decisions through regulatory or administrative actions. The Monitoring Team is not aware of the existence of any cases of listed individuals being stopped at borders since its last report, and the Committee has not received any reports in that regard.

55. The location of terrorists is crucial information in a sound threat assessment. The Monitoring Team continues to recommend that the Committee encourage Member States to report when they have prevented, allowed or discovered the entry of a listed individual into their territory.[24] In addition, receiving and adding to the List information concerning travel documents used by listed individuals in their attempts to enter countries would enhance the effectiveness of the travel ban.

## C. Exemptions

56. No travel ban exemption requests have been introduced since the Monitoring Team's last report. Three exemptions have been granted since the Committee established the new procedures allowing for a prompt response to exemption requests.

## D. Opportunities and challenges

57. The Monitoring Team's cooperation with the International Criminal Police Organization (INTERPOL) enhances the implementation of the travel ban. An INTERPOL-United Nations Security Council Special Notice has been issued for nearly every individual on the Al-Qaida Sanctions List.[25] Only 20 per cent of the

[24] The Team recommended this in para. 74 of its tenth report (S/2009/502). The Committee's position paper on that report (S/2010/125) does not refer to a position on this recommendation.

[25] As at 3 June 2013, these were available for 222 of the 226 listed individuals. In the remaining cases, either the individuals are deceased or the entries lack the minimum number of identifiers for a required Special Notice.

Special Notices include pictures of the individuals in question. The operability of the Special Notices has been improved, which enhances their usability for border control officials.

58. Although biometric data are an effective tool for checking the identity of a listed individual, many countries have not yet introduced this technology. Consequently, the use of a combination of false, forged and stolen documents by listed individuals to conceal their identity and/or profile presents a hurdle to the application of sanctions. INTERPOL's Stolen and Lost Travel Document Database contains more than 35 million travel documents reported lost or stolen by 166 countries.[26] The Monitoring Team continues to recommend that the Committee draw the attention of Member States to this essential tool and encourages Member States to permit direct, real-time access to it for first-line border security and consular officials.[27]

### 1. The International Civil Aviation Organization and the International Air Transport Association

59. Air travel can be the choice of prominent listed individuals, in particular financiers. Denying it offers a significant opportunity to influence their behaviour and their ability to support Al-Qaida. The travel ban requires States to prevent the entry of listed individuals into their territories, which makes them de facto inadmissible passengers. Airlines are responsible for the return of such passengers, which can become complicated if the Member State in which the flight originated also denies entry to the individual on the basis of the person's listing. A Member State can deny airspace access to a flight already in progress because a listed person is on-board. In short, facilitating the unauthorized international travel of listed people presents a business liability to airlines. This is an opportunity for the Committee to cooperate with the International Civil Aviation Organization (ICAO) and its private sector equivalent, the International Air Transport Association (IATA), which the Monitoring Team continues to facilitate. However, as commercial airlines are required only to check whether the passenger meets the entry criteria of the State to which he or she is travelling, which are listed in the Association's automated Travel Information Manual (TIMATIC) database,[28] aviation authorities of Member States need to inform IATA that not being subject to the travel ban, by virtue of not being listed or of qualifying for an exemption or an exception, is an entry requirement. The Monitoring Team recommends that the Committee request Member States to include the Al-Qaida Sanctions List and the travel ban in their national guidelines for inadmissible passengers.[29]

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[26] See www.interpol.int/INTERPOL-expertise/Databases.

[27] S/2012/968, para. 74. The Committee could add this recommendation to the travel ban explanation-of-terms document.

[28] TIMATIC is the industry standard used by airlines and travel agents to ensure their compliance with border control rules and regulations. See http://www.iata.org/publications/Pages/timatic.aspx. In theory, the TIMATIC system has the capacity to include information on passports that are not allowed for travel to certain destinations. The known details of travel documents available to the listed individuals could be used to ensure by means of TIMATIC that airlines deny transport to listed individuals, although this has not yet been tested.

[29] S/2009/502, para. 73.

### 2. Visa-free zones

60. The Monitoring Team has previously drawn attention to the challenges posed to the implementation of the travel ban by freedom of movement within visa-free zones.[30] These challenges have been effectively addressed by the States signatory to the Schengen Agreement through a combination of enhanced controls at their external borders and increased internal police and judicial cooperation. However, not all members of the Agreement currently have legislation in place that prohibits listed people from crossing borders in violation of the travel ban, and they should consider creating such regulations. Similar limitations are already in use for other categories of at-risk individuals. While free-movement zones such as the Economic Community of West African States (ECOWAS) favour economic growth and opportunities, listed individuals could move within such spaces with little or no restrictions in view of the absence of systematic checkpoints. The Monitoring Team will discuss these issues with ECOWAS and other visa-free-zone Member States. The Team recommends that the Committee encourage the sharing of best practices on border controls among Member States that are part of visa-free zones.

### 3. Travel documents of listed persons

61. New and existing travel documents of listed individuals permit their international movement. Member States utilize a variety of notes in travel documents to communicate that, inter alia, a passport is not valid for travel to certain countries. The Committee could encourage States to include language in existing or newly issued travel documents to indicate that the document bearer is subject to the travel ban and corresponding exemption procedures.[31] Travel document officials see no technical or financial obstacles to doing so.[32]

62. Another method of increasing the chances that border and transportation security officials will be alerted to the status of listed persons when they travel is the wider utilization of the INTERPOL Travel Documents Associated with Notices (TDAWN) search platform, which enables border authorities to check passport data to determine whether the holder is the subject of a Special Notice.[33] TDAWN could be more widely used by airlines for advance passenger information checks, obviating the need to have listed persons rejected at their destination points. The Committee could encourage Member States to make TDAWN widely available to relevant officials and the private sector and to incorporate it into routine checks such as those carried out using the INTERPOL Stolen and Lost Travel Document Database.[34] As the Committee saw merit in inviting States to ensure that airlines are aware of the travel ban,[35] the Security Council could encourage States to indicate to IATA through relevant aviation authorities that in addition to visa and other

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[30] S/2005/572, paras. 133-141.

[31] S/2012/968, para. 74. The Committee could add this recommendation to the travel ban explanation-of-terms document.

[32] Information obtained during the Team's discussions with ICAO and relevant Member State officials in October 2012.

[33] See INTERPOL *Annual Report 2011*, available at www.interpol.int/News-and-media/Publications#n627.

[34] The Team has discussed this issue extensively in its previous reports. For a description of INTERPOL databases, see www.interpol.int/INTERPOL-expertise/Databases.

[35] S/2010/125, para. 14.

admission requirements, they require that passengers not be subject to the travel ban or that relevant exceptions apply.[36]

63. TDAWN is one of the reasons why the List should contain up-to-date information about all travel documents of listed persons, as recommended by the Committee.[37] However, since there is an inevitable delay or occasional lapses in updating such information after the issuance of new travel documents, in cases where they are issued to those on the List, it would be useful if passports could be issued for a period of at least 5 years, as recommended by ICAO, and preferably up to 10 years.[38] The Committee could embrace this recommendation in the travel ban explanation-of-terms document.

# VI. The arms embargo

## A. How Al-Qaida obtains and uses arms

64. Light weapons are widely available in many parts of the world, and Al-Qaida and its affiliates can gain access to them with relative ease, depending on the location. Gaining access to and supplying ammunition for heavy weapons are more difficult. However, knowledge of improvised explosives has spread among Al-Qaida's associates, and increasingly sophisticated improvised explosive devices, along with simple devices constructed with relative ease, demonstrate the challenge of enforcing the arms embargo. Technical skills and methods are increasingly leaping from one Al-Qaida affiliate to others, supporting a level of innovation that increases the threat. Explosives experts to train the trainers are one of the remaining assets that the central Al-Qaida leadership can leverage to support its associates and affiliates.

65. A major development since the Monitoring Team's last report has been the discovery of the scale of the AQIM arsenal in northern Mali, where a significant array of weapons and explosives were discovered in the Adrar des Ifoghas mountains. Some of this had come from smuggling networks, funded by AQIM revenue derived from kidnapping; some had come from Qhadafi-era stockpiles in Libya, increasingly a source of commercial revenue for non-State actors in Libya seeking to monetize military assets. Civil and commercial explosives and ingredients, along with military-grade materiel, have been made available. Porous local borders have made trafficking easy. Meanwhile, the use of suicide bombers (as evidenced by the range of suicide belts found) introduces another dynamic into terrorism in the Sahel region.

## B. Implementation of the arms embargo

66. Member States do not generally provide weapons to Al-Qaida or its affiliates. A larger problem is the diversion of existing licit or illicit supplies (as in the case of AQIM, MUJAO, Boko Haram and Jabhat al-Nusra) or existing stockpiles in the

[36] IATA maintains a travel information management system that contains Member States' requirements for entry into their territories, which the airlines check against before allowing passengers to board. For a more detailed description, see S/2009/502, paras. 72 and 73.

[37] S/2009/427, para. 32; S/2008/408, para. 17.

[38] ICAO document 9957, *The Facilitation Manual* (2011), paras. 3.4.9 and 3.4.11.

hands of Al-Qaida affiliates (as in the case of Al-Shabaab and AQAP). A particular challenge for Member States is to ensure that licit supplies of arms are not diverted to listed groups or individuals, which may require greater regulatory focus, particularly in high-risk situations.

67. The Monitoring Team recommends further work on the part of the Committee and the Team to promote the arms embargo to Member States.

## C. Opportunities and challenges

68. There are opportunities for more detailed work on the procurement and use of arms by Al-Qaida and its affiliates. The Monitoring Team plans to intensify cooperation with Member States, other United Nations bodies and international organizations and relevant non-governmental organizations on this issue.

69. The Committee has approved and posted on its website an explanation-of-terms paper on the arms embargo[39] including a broad definition of "arms" in the context of the Al-Qaida sanctions regime. The Monitoring Team proposes to work closely with other international and national bodies concerned to raise awareness of the scope of the embargo as defined by the Committee. From the Team's point of view, sanctions cover not only all conventional arms and ammunition/munitions fired, launched or delivered by conventional arms, as well as their parts and components, but also training and technical assistance related to conventional arms. The document was most recently updated in 2011, and the Team recommends that the Committee further update the paper to reflect the evolved threat.

70. There may also be an opportunity to draw on the Arms Trade Treaty, adopted by the General Assembly on 2 April 2013. The Treaty regulates international trade in conventional arms and ammunition with the aim of preventing their wrongful diversion, including to Al-Qaida and its associates. Paragraph 1 of article 6 of the Treaty specifically stipulates: "a State party shall not authorize any transfer of conventional arms covered under article 2 (1) or of items covered under article 3 or article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes." Paragraph 1 of article 7 requires each exporting State Party, prior to authorization of the export of conventional arms, to assess the potential that the arms could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism.

71. Although it may take some time before the Arms Trade Treaty enters into force, it could be a useful tool for further advancing the implementation of the 1267 Committee sanctions regime. For instance, the Treaty requires each State party to designate one or more national points of contact to exchange information on matters related to the implementation of the Treaty. With the consent of the States parties, such points of contact could also serve as the 1267 Committee point of contact with regard to the implementation of the arms embargo sanction measures. In addition, recordkeeping requirements set out in article 12 may help the Committee and the Monitoring Team to identify the sources of weapons used by Al-Qaida and its associates.

[39] See www.un.org/sc/committees/1267/pdf/EOT%20Arms%20embargo_ENGLISH.pdf.

72. The Monitoring Team recommends closer coordination with the Coordinating Action on Small Arms (CASA) mechanism and the Office for Disarmament Affairs to facilitate the implementation of the sanctions regime. The Team is already establishing contact with the regional offices of the Office for Disarmament Affairs to improve information-sharing (particularly on munitions stockpile management, which proved to be a problem in the Libyan case). The Team also plans to integrate a greater focus on arms into its regional meetings of intelligence agencies and its engagement with regional organizations such as ECOWAS and the African Union. This should include a particular emphasis on (a) man-portable air defence systems, (b) weapons-grade chemicals and (c) technologies that can be used in improvised explosive devices.

# VII. The work of the Monitoring Team

## A. Analysis, monitoring and implementation

73. Since its last report, the Monitoring Team's emphasis has been on the core business: analysis of the Al-Qaida threat, advice on listings, and a focus on furthering the impact of the regime. Detailed, evidence-based analysis is essential to the work of the 1267 Committee. The Team does not seek to supplant the extensive work done by Member States to understand, investigate and prevent terrorism.[40] The advantage that the Team brings is the ability to work collaboratively with Governments around the world, as well as to reach out to external specialists, in order to build an integrated assessment of the threat posed by Al-Qaida and its associates and advance a targeted, effective and fair sanctions regime. The Team's composition — a group of experts with counter-terrorism, diplomatic, analytical, judicial, financial and legal experience supported by a high-quality team of United Nations professional staff — lends itself to delivering this.

74. First-rate analysis depends on excellent information, good judgement and the ability to provide an independent assessment. The Team has advanced this in 2013 through the following activities:

(a) Maintaining liaison with Member States and their experts, including through detailed country visits;

(b) Tracking the latest analysis on Al-Qaida and its affiliates in the media and in academic and think-tank literature, as well as reaching out directly to subject-matter experts;

(c) Holding closed seminars with leading experts on violent extremists (for example, those in the Sahel) in order to identify the right questions to explore in greater depth;

(d) Sharing and testing its analytical findings with the Committee, Member States and other United Nations entities.

75. Advice on the Al-Qaida sanctions regime can help to improve the regime by:

[40] Indeed, the Team draws upon it. See, for example, the foresight study by the Canadian Security Intelligence Service, *The Future of Al Qaeda* (May 2013), available at http://www.csis-scrs.gc.ca/pblctns/cdmctrch/20130501_eng.pdf.

(a) Enhancing the quality of listings, particularly through regular reviews, improved identifiers and a focus on innovation and delivery;

(b) Ensuring that the List is disseminated widely, including through INTERPOL-United Nations Security Council Special Notices, and in a format that serves the needs of Member States and private sector institutions;

(c) Informing the work of the Ombudsperson;

(d) Producing better management information for the Committee.

## B. Cooperation with Member States

76. As requested by the Security Council in resolution 2083 (2012), the Monitoring Team has continued its outreach activities, including in particular its visits to Member States. Between November 2012 and June 2013, it visited 11 Member States, in Africa, Europe, South-East Asia and North America. Those visits helped the Team to understand the challenges that Member States encounter when implementing the sanctions regime and, through direct contact with local authorities directly responsible for security and counter-terrorism, enabled it to gain a better understanding of how various States perceive the threat posed by Al-Qaida and its affiliates. The valuable information gathered during these trips has allowed the Team to make recommendations to the Committee. The Team has also attached great importance, during its direct engagement with national authorities, to the request made by the Security Council, in paragraph 61 of resolution 2083 (2012), that the Team facilitate assistance on capacity-building to enhance the implementation of the measures upon request by Member States, and will continue to further develop this approach.

## C. Regional meetings with intelligence and security services

77. In November 2012, the Monitoring Team held its fifth regional meeting for heads and deputy heads of intelligence and security services in Nairobi, to discuss the influence of Al-Qaida in East Africa, with the participation of delegations from Burundi, Djibouti, Kenya, Somalia, Uganda, the United Republic of Tanzania and Yemen. The meeting was co-hosted by the Somalia and Eritrea Monitoring Group and was supported by the National Counter Terrorism Centre of Kenya. The meeting gave rise to a useful discussion of the changing nature of the threat posed by Al-Qaida and its affiliates in East Africa and the ways in which these two United Nations sanctions regimes could address it.

## D. Advancing a "One United Nations" approach to Counter-Terrorism

78. For Member States and citizens, the United Nations is one Organization and one brand. The United Nations has done much to advance a "One United Nations" approach to make sure that the various United Nations bodies and agencies can better deliver a coherent agenda. The various counter-terrorism bodies in the United Nations family work closely together, but there is scope for improving this. To that end, the Monitoring Team plans to intensify joint work with core United Nations partners in 2013.

### 1. Cooperation with other Security Council expert groups

79. The Monitoring Team works closely with other United Nations expert groups and special political missions, in particular those with the most direct links to its work. These include the Panel of Experts on Libya and the Somalia and Eritrea Monitoring Group. Meetings with both groups have taken place over the past six months. Moreover, there have been meetings or telephone conversations with other expert groups in order to identify areas where we can learn from each other, particularly with regard to the arms embargo, the travel ban and the assets freeze.

### 2. Counter-Terrorism Implementation Task Force

80. The Monitoring Team has continued to contribute to the work of the Counter-Terrorism Implementation Task Force, which provides an important vehicle for coordination across the United Nations family and for advancing the implementation of the United Nations Global Counter-Terrorism Strategy. The Team looks forward to regular meetings of the Task Force and welcomes the appointment of Jehangir Khan as its Director ad interim in 2013.

81. The Monitoring Team also remains active in relevant working groups.[41] The Team's involvement with the Task Force also includes regular participation in all of its coordination meetings and annual retreats. In June 2013, the Coordinator spoke at the International Counter-Terrorism Focal Points Conference on Addressing Conditions Conducive to the Spread of Terrorism and Promoting Regional Cooperation, organized in partnership with the Government of Switzerland.

82. The Monitoring Team continues to work closely with the United Nations Counter-Terrorism Centre, which was established within the Task Force office to assist in building the capacity of Member States to better implement all four pillars of the United Nations Global Counter-Terrorism Strategy in a comprehensive manner.

### 3. Working closely with the Counter-Terrorism Committee Executive Directorate

83. The Counter-Terrorism Committee Executive Directorate plays a crucial role in advancing international cooperation against terrorism. The Monitoring Team has worked closely with the Directorate, under the leadership of its Executive Director, Mike Smith, and looks forward to continuing that relationship with his recently announced successor, Jean-Paul Laborde.

84. There are three particular areas in which cooperation has flourished. The first concerns the financing of terrorism and the Directorate's initiative to enhance the capacity of Member States to establish an effective freezing mechanism consistent with international standards and obligations, including the relevant human rights obligations. The Monitoring Team participated in the launch meeting, held in October 2012, and the regional workshop for States members of the West African Economic and Monetary Union held in Dakar in December 2012. The second area concerns border security, with respect to which the Team took part in the conference

[41] The Working Group on Tackling the Financing of Terrorism, the Working Group on Countering the Use of the Internet for Terrorist Purposes and the Working Group on Dialogue, Understanding and Countering the Appeal of Terrorism. The Team also regularly contributes to the Working Group on Border Management related to Counter-Terrorism and the Working Group on Protecting Human Rights While Countering Terrorism.

on border-control cooperation in the Sahel and the Maghreb held in Rabat in March 2013. And the third area concerns new technologies, regarding which the Team also took part in the Counter-Terrorism Committee special event on new communications and information technologies held in May 2013.

85. The Monitoring Team plans to continue to work closely with the Directorate in areas where their mandates meet and to actively share information. The Team also hopes that the long-standing plan to co-locate the Directorate and the Team in the same building can be implemented by 2015, leases permitting.

### 4. Advancing implementation with the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime

86. The Terrorism Prevention Branch of the United Nations Office on Drugs and Crime continues to play an important role as a capacity-building provider for Member States. The Monitoring Team plans to continue working with the Branch, which should be the partner of choice for most United Nations counter-terrorism capacity-building in order to avoid duplication of efforts.

## E. International and regional organizations

87. The Monitoring Team delivered training courses and participated in international, regional and subregional meetings organized by the United Nations, the African Union, FATF, INTERPOL and other organizations, which provided it with the opportunity to inform attendees about the sanctions regime and encourage implementation. Between November 2012 and June 2013, the Team participated in 21 such meetings and continued to play an active role in the development of measures to counter the financing of terrorism through its participation in plenary meetings of FATF and meetings of FATF-style regional bodies. The Team also actively participates in the Global Counterterrorism Forum.

## F. Cooperation between the Security Council and INTERPOL

88. The Monitoring Team has continued to strengthen its active cooperation with INTERPOL. It attended the eighty-first INTERPOL General Assembly, held in Rome in November 2012, and participated as a trainer, from November 2012 to June 2013, in two courses on the INTERPOL-United Nations Security Council Special Notices. One of these was held in Bratislava for law enforcement and other officials from Eastern European Member States, and the other was held in Lyon, France, for law enforcement and other officials from African Member States. The objective of the training courses, of which the Team is an integral part, is to help participants understand the sanctions regime and, in particular, the Special Notices, in order to improve implementation of the sanctions measures against Al-Qaida and the Taliban.

89. The operability of the INTERPOL-United Nations Security Council Special Notices has been improved with the agreement between the United Nations and INTERPOL, signed at the end of 2012, that provided for direct iLink access to the contents of the Notices, allowing the Secretariat to introduce updates and amendments in a timely manner. The use of the Special Notices system has now

been extended to seven sanctions committees.[42] The Team has consistently received positive feedback from Member State officials during its country visits and regional meetings about the impact of the Special Notices on implementation of the sanctions.

90. INTERPOL also provides the Committee with the opportunity to disseminate Orange Notices. Orange Notices serve to warn of an event, a person, an object or a process representing a serious and imminent threat to public safety. INTERPOL has suggested that parts of the Monitoring Team's findings — for example, those on issues concerning the arms embargo and, in particular, improvised explosive devices — could be disseminated through INTERPOL. The Team recommends that the Committee consider adopting Orange Notices on thematic matters that would enhance the implementation of the Al-Qaida sanctions regime.

## G. Building links to academic and civil society experts

91. The Monitoring Team is mandated to study and report on the changing nature of the threat, including through dialogue with relevant scholars and academic bodies. Since January 2013, the Team has held some 30 meetings with external experts and scholars and has introduced a monthly research update for internal circulation.

## H. Contributing to the public debate

92. The Monitoring Team would welcome feedback regarding the analysis and suggestions contained in the present report. Such feedback can be e-mailed to 1267mt@un.org.

[42] The Security Council committees established pursuant to resolutions 751 (1992) and 1907 (2009), 1267 (1999) and 1989 (2001), 1521 (2003), 1533 (2004), 1572 (2004), 1591 (2005), and 1988 (2011). See www.interpol.int/INTERPOL-expertise/Notices/Special-Notices.

# Annex I

## Litigation relating to individuals on the Al-Qaida Sanctions List

1. The legal challenges involving individuals and entities on the Al-Qaida Sanctions List known to the Monitoring Team to be pending or to have been recently concluded are described below.

### European Union

2. The European Commission has appealed jointly with the Council of the European Union and a State member of the Union against the decision regarding Yasin Abdullah Ezzedine Qadi taken by the Court of Justice of the European Union in September 2010,[a] which ordered the annulment of the sanctions against Qadi, adopting a "full and rigorous"[b] standard of judicial review. The European Court of Justice held a hearing on the appeal on 16 October 2012. The appeal remains pending even though Qadi was delisted by the Al-Qaida Sanctions Committee on 5 October 2012. The Advocate General issued an opinion in this matter on 19 March 2013 (the judgement is expected to be rendered on 18 July 2013).

3. The General Court stayed the proceedings brought by Sanabel Relief Agency Limited (QE.S.124.06), among others, pending the ruling in *Kadi II*.[c]

### Pakistan

4. The action brought by the Al Rashid Trust (QE.A.5.01) against the application of the sanctions measures against it remains pending in the Supreme Court of Pakistan on appeal by the Government from an adverse decision of 2003.[d] The similar challenge brought by Al-Akhtar Trust International (QE.A.121.05) remains pending before a lower court.[e]

### United Kingdom of Great Britain and Northern Ireland

5. The United Kingdom is currently defending a judicial review challenge to its decision-making with regard to the designation under the Al-Qaida sanctions regime of Hani al-Sayyid al-Sebai Yusif (QI.A.198.05), who resides in the United Kingdom.[f]

6. The United Kingdom is also currently defending a judicial review challenge to its decision-making with regard to the designations under the Al-Qaida sanctions regime of Abdulbasit Abdulrahim, Abdulbaqi Mohammed Khaled and Maftah Mohammed Elmabruk (all of whom have been delisted).[g]

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[a] Judgements of the Court of Justice of the European Union (http://curia.europa.eu), case T-85/09, *Kadi v. Commission*, 30 September 2010.

[b] Ibid., *Kadi v. Commission*, para. 151.

[c] Ibid., case T-134/11, *Al-Faqih and Others v. Commission*.

[d] Information provided by Pakistan.

[e] Information provided by Pakistan.

[f] Information provided by the United Kingdom.

[g] Information provided by the United Kingdom.

7. In addition, the United Kingdom is currently defending a judicial review challenge to its decision-making with regard to the designation under the Al-Qaida sanctions regime of Mohammed al Ghabra (QI.A.228.06), who resides in the United Kingdom.[h]

**United States of America**

8. On 23 September 2011, the United States Court of Appeals for the Ninth Circuit issued a decision upholding the designation of Al-Haramain Foundation (United States of America) (QE.A.117.04) on the merits and finding that, while aspects of the process afforded to the Foundation violated its Fifth Amendment right to due process, these violations were a harmless error.[i] The Ninth Circuit did, however, find that the failure to obtain a judicial warrant prior to the designation violated the Fourth Amendment and remanded the case to the district court to consider what remedy, if any, was appropriate. On 14 December 2011, the Government petitioned the Ninth Circuit for a rehearing. On 27 February 2012, the Ninth Circuit denied the rehearing petition and revised its opinion to clarify the Fourth Amendment holding. Briefing on remand is currently in process in the district court.

9. On 12 December 2012, the district court issued an opinion and order finding the Fourth Amendment violation to be harmless error, denying Al-Haramain's motion to file an amended complaint and denying Al-Haramain's request for further relief with respect to the Fifth Amendment. On 8 March 2013, Al-Haramain filed a motion seeking payment of attorneys' fees; briefing with respect to this motion is ongoing.[j]

[h] Information provided by the United Kingdom.

[i] *Al Haramain Islamic v. United States Department of Treasury*, No. 10-35032 (23 September 2011) (available at www.ca9.uscourts.gov/datastore/opinions/2011/09/23/10-35032.pdf).

[j] *Al Haramain Islamic v. United States Department of Treasury*, 2012 WL 6203136 (D. Or.).

# Annex II

## Case study 1: how the 1267 Committee and the Monitoring Team reacted to the Malian crisis

1. Al-Qaida affiliates gained ground in northern Mali in 2012, triggering a political crisis and international intervention. The 1267 Committee and the Monitoring Team responded quickly to this changing situation, maintaining liaison with Member States in the region, other United Nations officials (in particular in the United Nations Office on Drugs and Crime, the United Nations Office for West Africa and the Panel of Experts on Libya), the African Union and external experts. Taking advantage of the border control initiative of the Counter-Terrorism Committee Executive Directorate, the Monitoring Team chaired a session of members of Sahel intelligence agencies in Rabat in March 2013. The Team has also formally visited Nigeria and Niger and was formally tasked by the Security Council, by its resolution 2100 (2013), with working closely with the United Nations Multidimensional Integrated Stabilization Mission in Mali on threat assessment.

2. This intensive engagement has had two main outcomes. First, it has allowed for informed advice during a series of listings in the first six months of 2013. Two groups (Ansar Eddine and the Movement for Unity and Jihad in Western Africa) have been listed by the Committee, while additional individual listing requests have been received (of which four have so far been listed). Second, the Monitoring Team's experts have worked closely with officials from the Member States in the region in order to spread understanding of the regime, in particular of the way in which any Member State can propose a listing to the Committee. A series of further regional visits are planned with a view to liaison with national Government experts, and the Team is also planning to convene a regional meeting of intelligence services in late 2013.

# Annex III

## Case study 2: information provided by the International Air Transport Association about airline passenger screening procedures

1. In a change from past practice, airlines no longer check passenger lists against the no-fly lists of Member States themselves. In the most advanced cases, an interactive advance passenger information system is installed. During check-in, the system automatically checks passenger names against the no-fly lists of the country to which the passenger intends to travel and tells the airline in advance if the passenger is barred from entering the country.

2. In countries that apply a basic advance passenger information system, the airline transmits the final list of passengers once the airplane has taken off for the country to which it is heading. The country then checks this passenger list against its national lists and informs the airline in the event that passengers are barred from entering the country.

3. These systems are currently being employed in some stage of development in some 59 countries, for both in- and outbound flights. Most of them also employ compatible passenger name record systems, using the same datasets for all passengers. Eleven of them employ interactive advance passenger information systems.

4. Based on the total number of passengers checked by both interactive advance passenger information and advance passenger information systems, approximately 40 per cent of all cases are pre-checked (interactive advance passenger information) and approximately 60 per cent are batch-checked (advance passenger information).

5. Therefore, neither IATA nor the individual airlines maintain no-fly lists. Such lists are always implemented by means of direct cooperation between the airlines and the countries to which the airplanes are intended to fly.